

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
HUNTINGTON DIVISION**

**WEST VIRGINIA HIGHLANDS
CONSERVANCY, APPALACHIAN
VOICES and SIERRA CLUB,**

Plaintiffs,

v.

Civil Action No. 3:19-0573

LEXINGTON COAL COMPANY, LLC,

Defendant.

DECLARATION OF JAMES M. HECKER

James M. Hecker affirms and states as follows:

1. I am co-counsel for Plaintiffs in this action and submit this declaration in support of their motion for interim attorneys' fees and expenses in this case.

2. In 2019, the Ohio Valley Environmental Coalition, West Virginia Highlands Conservancy, Appalachian Voices, and Sierra Club asked Public Justice and Appalachian Mountain Advocates to represent them in this case. Throughout this litigation, I have been co-counsel with Michael Becher.

3. Because Plaintiffs could not afford to pay for legal representation, Plaintiffs' counsel agreed to represent them in this case on a contingent fee basis. Under the retainer agreement, Plaintiffs' counsel would receive no payment unless there was a fee award or settlement.

4. This Court reviewed my attorney experience in *OVEC v. Fola Coal Co.*, Civil No. 2:13-5006 (S.D.W.Va.) and determined that my reasonable hourly rate for litigation of the same type of claims as those presented here for the period from 2012 through 2016 should be \$450 per hour. Doc. 221 at 7 n. 4. More recently, this Court determined that my reasonable hourly rate

for litigation of the same type of claims as those presented here for the period from 2019 through 2021 should be \$475 per hour. *West Virginia Highlands Conservancy v. Bluestone Coal Corp.*, Civil No. 1:19-00576, 2021 WL 4480995 (Sept. 29, 2021). I am requesting the same \$475 hourly rate in this case.

5. I have kept contemporaneous time records in this case. I record on a daily basis on a desk calendar the time I spent on this case and the nature of services I performed. I record my time in 15-minute increments. To avoid over-billing for smaller increments of time, I round down to the lesser quarter hour. Each week I transfer my time from my calendar to a Timeslips computer program. I printed out my time records from that program for this case, and then assigned that time to the categories described below. My time records are attached.

6. Plaintiffs sent the 60-day notice letter on June 4, 2019. The complaint was filed on August 6, 2019. It alleged that Lexington violated its CWA permit and § 401 certification and its SMCRA permits at its Low Gap Surface Mine No. 2 and No. 10 Mine. ECF 1.

7. In March 2021, the Court granted Plaintiffs' motion for summary judgment in all respects, finding that the Court had jurisdiction over Plaintiffs' three claims and finding Lexington liable on all three claims. ECF 29. In September 2021, the Court granted Ohio Valley Environmental Coalition's motion to withdraw as a plaintiff. ECF 53. In December 2021, the Court granted the three remaining Plaintiffs' motion for injunctive relief on those three claims and ordered Lexington to comply with its permits and certification. ECF 54. In March 2022, the Court granted Plaintiffs' motion for contempt and granted more specific injunctive relief. ECF 60. The only remaining issue in the case is Lexington's liability for civil penalties for its past violations. The three remaining Plaintiffs have therefore fully prevailed on liability and partially prevailed on remedy.

8. I have divided the compensable time in the case into the following categories:

- (a) notice letter;
- (b) complaint, scheduling and preliminary matters (Doc. 1-13, 17-18, 27-28);
- (c) initial disclosures and document requests (Doc. 14-16);
- (d) site visit (Doc. 19);
- (e) expert reports (Doc. 20);
- (f) Plaintiffs' summary judgment motion (Doc. 21-26, 30-31);
- (g) settlement negotiations and status reports (Doc. 32-45, 47-48);
- (h) OVEC's motion to withdraw as a plaintiff (Doc. 46, 53);
- (i) Plaintiffs' motion for injunctive relief (Doc. 49, 51-52, 54);
- (j) Plaintiffs' motion for contempt (Doc. 56-60); and
- (k) Plaintiffs' motion for interim fees and costs (Doc. 61).

9. Plaintiffs are not seeking fees for OVEC's motion to withdraw.

10. Below is the summary of my time spent in the categories listed above:

Category	Total Hours
Notice letter	15.75
Complaint	9.75
Scheduling and preliminary matters	2.75
Initial disclosures and document requests	6.00
Site visit	0.25
Expert reports	1.25
Plaintiffs' SJ motion	11.00
Settlement negotiations and status reports	0.00
OVEC motion to withdraw	0.00
Plaintiffs' motion for injunctive relief	5.50
Plaintiffs' motion for contempt	1.25
Plaintiffs' motion for interim fees and costs	3.00
Total hours	56.50

11. My total compensable hours in this case are 56.50. The hours of requested compensable time reflect, in my professional judgment, the amount of time reasonably necessary to litigate the successful claims in this case.

12. Public Justice has incurred \$454.76 in expenses as a result of this litigation. The requested expenses are of a type that would routinely be billed to a paying client. These expenses are detailed in the attached table and summarized below and are based on accounting records provided to me by our office manager:

Description	Amount
Visiting attorney fee	\$50.00
WV Bar pro hac fee	\$358.00
WestLaw research expenses	\$46.76
Total	\$454.76

I declare under penalty of perjury that the foregoing is true and correct.

Dated: March 18, 2022

s/ James M. Hecker

Attachments

Table of Hecker Hours

Table of Expenses

Date	Activity	Description	Time Spent	Subtotals
1/18/2019	Notice Letter	research Lexington Ben Creek and No. 10 cases, draft NOI	3.00	
1/22/2019	Notice Letter	research and draft Lexington NOI	3.25	
1/23/2019	Notice Letter	research and draft Lexington NOI	4.25	
1/24/2019	Notice Letter	telephone call with Joe, Mike and Derek about new case selection and strategy; research and draft Lexington (NOI)	3.75	
1/25/2019	Notice Letter	research ion mixture for Lexington NOI, review MB's added paragraph re same	0.50	
5/6/2019	Notice Letter	update, Lexington NOI with 1st Q 2019 DMR data	1.00	15.75
7/9/2019	Complaint	research and draft Lexington complaint	1.50	
7/10/2019	Complaint	draft Lexington complaint	1.75	
7/11/2019	Complaint	research and draft Lexington complaint	2.50	
7/12/2019	Complaint	research recent DMRs for Lexington complaint	0.25	
7/19/2019	Complaint	research new Lexington DMRs	0.25	
7/26/2019	Complaint	research and download new DMRs for Lexington	0.25	
7/26/2019	Complaint	review APOs for Lexington re preclusion issue, research 309g6 issue	0.75	
7/29/2019	Complaint	update complaint based on new second Q 2019 DMRs	1.50	
8/5/2019	Complaint	proof final complaint	1.00	9.75
9/13/2019	Scheduling/Prelim.	draft and file pro hac applications with court and WV Bar	0.50	
11/7/2019	Scheduling/Prelim.	research recent permit modifications and telephone call with DT re strategy for 26f conference call	0.75	
11/8/2019	Scheduling/Prelim.	telephone call with counsel re 26f report; draft questions for Lexington	1.50	2.75
11/20/2019	Discl/Doc Requests	draft document requests	1.00	
12/4/2019	Discl/Doc Requests	draft 26a1 disclosures and organize documents to disclose	1.25	
2/4/2020	Discl/Doc Requests	research and update recent DMRs	0.75	
3/12/2020	Discl/Doc Requests	review D's doc prod	0.50	
6/16/2020	Discl/Doc Requests	update recent DMRs; research recent draft and final permits and enforceability of selenium limits in light of recent permit mods	2.50	6.00
7/6/2020	Site Visit	review and edit site visit request	0.25	0.25
8/24/2020	Expert Reports	review stream sampling results; telephone call with DT and MB re expert report strategy	0.75	
9/15/2020	Expert Reports	review draft of Baker expert report	0.25	
11/2/2020	Expert Reports	email to co-counsel re SJ strategy given D's failure to file expert report	0.25	1.25
11/25/2020	P's SJ Motion	telephone call with MB and DT re SJ motion and strategy	0.25	
11/29/2020	P's SJ Motion	edit draft SJ brief	1.00	
11/30/2020	P's SJ Motion	edits to SJ brief	3.50	
12/1/2020	P's SJ Motion	review DMRs for additional Se violations; download final filed version of SJ motion, exhibits and brief	0.75	
1/5/2021	P's SJ Motion	research and draft reply brief	3.25	
1/11/2021	P's SJ Motion	edit MB's draft reply brief	1.25	
3/22/2021	P's SJ Motion	review court's SJ decision and telephone call with MB re motion to clarify	0.25	
3/24/2021	P's SJ Motion	review Blackjewel bankruptcy decision and evaluate impact on Lexington	0.25	
3/25/2021	P's SJ Motion	review and edit motion to clarify SJ ruling	0.25	
4/26/2021	P's SJ Motion	download new DMRs	0.25	11.00
9/14/2021	P's Inj Motion	review and edit draft motion for injunctive relief	0.50	

Hecker Hours

WVHC v. Lexington Coal Co.

10/4/2021	P's Inj Motion	read Lexington opp to motion for inj	0.25	
10/5/2021	P's Inj Motion	research issues and arguments for reply for motion for inj; telephone call with Becher re same	1.75	
10/8/2021	P's Inj Motion	edit and revise draft reply for motion for inj	3.00	5.50
12/14/2021	P's Fee Motion	draft fee motion, brief, and declaration	2.75	
1/13/2022	Contempt	review remedial plan	0.25	
2/2/2022	Contempt	edit contempt memo	0.75	
2/24/2022	Contempt	edit contempt reply	0.25	1.25
3/18/2022	P's Fee Motion	update declaration	0.25	3.00
		Total	56.50	56.50

Accrual Basis

OVEC v Lexington Coal Corp
All Transactions

Date	Source Name	Memo	Amount
09/13/2019	James Hecker	Pro hac vice fee	\$ 50.00
09/13/2019	James Hecker	WV Bar fee	\$ 358.00
11/30/2019	West Payment Center	Case Researc November 1- November 30 2019	\$ 6.12
06/30/2020	West Payment Center	Case Research June 1-30, 2020	\$ 7.03
12/31/2020	West Payment Center	Case Research 12/1-12/31/2020	\$ 1.78
01/31/2021	West Payment Center	Case Research - January 1 - January 31, 2021	\$ 24.51
10/31/2021	West Payment Center	Case Research 10/1 - 10/31/2021	\$ 7.32
			<u>\$ 454.76</u>
			<u>\$ 454.76</u>